

REMARKS

Thorough examination of the application is sincerely appreciated.

Applicant wishes to thank the examiner for indicating allowability of claims 9-15 and allowable subject matter of claims 2, 3, 8 and 21-23.

According to the Office Action, claims 1, 4, 6, 7 and 16-19 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent 6,882,660 (hereinafter “Lee”). Further according to the Office Action, claims 24-26 were rejected under 35 USC 103(a) as being unpatentable over Lee in view of U.S. Published Application US 2002/0172208 (hereinafter “Malkamaki”).

In response, the rejections are respectfully traversed as lacking sufficient factual support and not grounded in applicable law. It will be shown that the claimed invention is neither anticipated nor rendered obvious by Lee and Malkamaki, whether considered separately or in combination.

Lee fails to teach or suggest, among other things, Applicant’s feature of “determining whether said received packet is a retransmitted packet by comparing a field of said received packet with a corresponding field of a previous packet stored in a second storage medium,” as recited in claim 1. At column 7, lines 44-55 cited in the Office Action, Lee merely discloses the following:

“At the step S412, the layer 1 of the reception side determines whether normal data transmission or repeated data transmission was performed to transmit the data. The determination procedure is performed based on transmission information. Here, before receiving the data, the reception side can receive the transmission information that is included in an upper layer message. On the other hand, the reception side can receive the transmission information along with the data, wherein the transmission information is transmitted over a path that can be recognized by the layer 1 of the reception side.”

Namely, Lee's transmission information – which indicates whether data transmission is normal or repeated – is separate from the data and is received either before the data or concurrently with the data. This is in stark contrast to the above-mentioned Applicant's feature recited in claim 1.

Malkamaki fails to cure this Lee's deficiency. As disclosed in paragraph 36, lines 10-26 on page 4 cited in the Office Action, Malkamaki merely discloses the following:

“When the user terminal receives a data block, its physical layer first decodes the shared control channel to get the sequence number (as well as other relevant information sent on SCCH). Based on the sequence number, the user terminal's physical layer checks a soft combining buffer, where it stores data blocks it has already received but which have errors, to determine whether it has already received the data block indicated by the sequence number, i.e. to determine whether the data block is a retransmitted data block.”

Namely, Malkamaki decodes the control channel data to obtain the sequence number of a data block. Even if, for the sake of argument, Malkamaki's data block is analogous to Applicant's data packet, Malkamaki still does not teach or suggest Applicant's feature of “determining whether said received packet is a retransmitted packet by comparing a field of said received packet with a corresponding field of a previous packet stored in a second storage medium,” as recited in claim 1.

According to the binding case law established by U.S. Court of Appeals for the Federal Circuit and its predecessor Court (as interpreted in Section 2131 of the MPEP), to anticipate a claim, the reference must teach each and every element of that claim. As discussed above, Lee is woefully deficient in teaching each and every element of Applicant's claim 1. It is, therefore, respectfully submitted that independent claim 1 is not anticipated by Lee. Withdrawal of the rejection is respectfully requested, as it cannot be sustained legally.

Furthermore, it is respectfully submitted that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *See* MPEP § 2143-§2143.03 for decisions pertinent to each of these criteria.

Analyzing the Lee and Malkamaki references according to the above roadmap, there is no motivation or suggestion to combine the references. Second, there is no reasonable expectation of success because the prior art references are not combinable, and they do not supplement each other. Third, Lee and Malkamaki, even when combined, do not teach the above-mentioned Applicant's feature.

Therefore, the cited references fail to render obvious the claimed invention, because the above-identified criteria are not met. The claimed invention, according to claim 1, is thus distinguishable over the cited references.

At least for the above reasons, Applicant submits that the rejection of claim 1, as amended, has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

Analysis of independent claim 16 is analogous to the one of claim 1, as presented hereinabove. To avoid repetition, claim 16 will not be discussed in detail with the understanding

that it is patentable at least for the same reasons as claim 1. Applicant, therefore, respectfully requests withdrawal of the rejection and allowance of claim 16.

Claims 4, 6, 7, 17-19 and 24-26 depend from independent claims, which have been shown to be allowable over the prior art reference. Accordingly, claims 4, 6, 7, 17-19 and 24-26 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein. Applicant submits that the reason for the rejection of claims 4, 6, 7, 17-19 and 24-26 has been overcome and respectfully requests withdrawal of the rejection and allowance of the claims.

In view of the above, it is submitted that Lee and Malkamaki, whether considered separately or in combination, do not anticipate or render obvious the present invention. Withdrawal of the rejections is, therefore, respectfully requested.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited. However, if for any reason this application is not considered to be in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the number listed below prior to issuing a further Action.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

By /LARRY LIBERCHUK/
Larry Liberchuk, Reg. No. 40,352
Senior IP Counsel
Philips Electronics N.A. Corporation
914-333-9602

October 20, 2006